

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760
david@weinsofflaw.com

SEP 09 2019

Via Certified Mailing – Return Receipt

September 5, 2019

Duffy Keys, Owner
Jim Borsack, Owner
Managing Agent
B Cellars Winery & Vineyards
703 Oakville Cross Road
Napa, CA 94558-9220

Jim Borsack, Manager
26 Brix, LLC
dba B Cellars Winery & Vineyards
703 Oakville Cross Road
Napa, CA 94558-9220

Christopher T. Kenney, Secretary
American Fidelity Corporation, Manager
Vintage Oakville Cross LLC
P.O. Box 258882
Oklahoma City, OK 73125-8882

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Keys, Mr. Borsack, Mr. Kenney and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring at the winery known as B Cellars Winery & Vineyards (“the Winery”) located at 703 Oakville Cross Road in Napa, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and the associated industrial operations taking place on the Winery property including 701 Oakville Cross Road.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.

CWA §402(p), 33 U.S.C. § 1342 establishes a framework for regulating stormwater and non-stormwater discharges from industrial facilities such as the Winery under the NPDES Notice of Violations Under CWA – Page 1

program. States with approved NPDES permitting programs are authorized under this section to regulate stormwater discharges through individual permits issued to owners and/or operators of an industrial site and/or through the issuance of a single, statewide general permit applicable to all stormwater dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial stormwater dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge stormwater lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and ensure compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a). Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, B Cellars Winery & Vineyards, 26 Brix, LLC, and American Fidelity Corporation (collectively, the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

Any industrial facility discharging industrial-related stormwater or non-stormwater from its site must obtain coverage under an NPDES permit. River Watch notices the Discharger of ongoing violations of CWA § 402: (a) through its failure to apply for, obtain, and comply with the terms and conditions of an individual NPDES permit; or (2) through its failure to submit a Notice of Intent (“NOI”) seeking coverage under the General Permit for the Winery. Either permit would address the discharges of stormwater and non-stormwater relating to industrial services and operations taking place at the Winery.

River Watch, following its investigation and consultation with experts, contends the Discharger has failed to conduct its industrial operations at the Winery with coverage under and in compliance with any of the requirements under the CWA including, but not limited to, eliminating the threat of pollution from those industrial operations.

Only dischargers that meet the requirements of the “No Exposure Certification” (“NEC”) Conditional Exclusion set forth in Section XVII of the General Permit are exempt from the Storm

Water Pollution Prevention Plan (“SWPPP”) requirements, sampling requirements, and visual requirements of the General Permit.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the permitting requirements under the CWA is not a mere statutory and regulatory exercise. The lands in and surrounding the Winery produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Napa County landowners. The Winery appears to support this, as it proclaims on the B Cellar’s website – “Our vision embraces responsible use and protection of our natural environment through conservation and sustainable business practices.” (<https://www.bcellars.com/>).

A review of publicly available information and eyewitness reports reveal that industrial operations at the Winery are conducted both indoors and outdoors where they are subject to rain events. Because there is no compliance by the Discharger with standard CWA permit requirements, there is no stormwater sampling, monitoring, or implementation of Best Management Practices that would control the discharge of pollutants and ensure there is no unlawful discharge of pollutants from the Winery. This concern for effective storm or process water pollution control extends to the following:

- “Erosion and Sediment Controls” must be in place at the Winery to ensure roadways used for the trucking of supplies to, from, and within the Winery, as well as traffic to and from the “salons,” are constructed and maintained to properly control stormwater discharges.
- A comprehensive potential pollutant analysis must be conducted by the Discharger, including an analysis of transportation-related services to and from the Winery.

Note that in addition to the pollution controls imposed under CWA permitting, the RWQCB has established water quality standards applicable to facilities such as the Winery. The RWQCB’s Basin Plan includes both numeric and narrative standards.

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations are Duffy Keys, Jim Borsack, 26 Brix, LLC, and American Fidelity Corporation as owners and operators of B Cellars Winery & Vineyards and the land and acreage underlying the Winery.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at both 703 and 701 Oakville Cross Road in Napa, California, including the waters of the Napa River.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from July 1, 2015 to September 5, 2019. This Notice includes all violations which occur after the range of dates covered by this Notice. Some

of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com .

REMEDIAL MEASURES REQUESTED

River Watch believes that application to the RWQCB for an individual NPDES permit or the filing of an NOI seeking coverage under the General Permit, followed by strict compliance with the terms and conditions imposed, is necessary in order to bring the Discharger into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment surrounding the Winery.

CONCLUSION

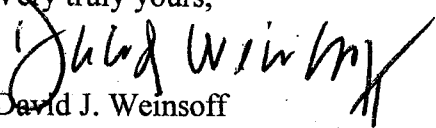
The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community and may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to CWA § 309(d) and 505, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in

federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit to the Winery. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of the CWA relating to industrial operations taking place at the Winery, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


David J. Weinsoff

DW:lm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-0003

Michael Stoker, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105-3920

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Tracy Ware, Registered Agent
26 Brix, LLC
703 Oakville Cross Road
Napa, CA 94558-9220

Stephen T. Buehl, Registered Agent
Vintage Oakville Cross LLC
1030 Main Street, Suite 212
St. Helena, CA 95474-2056